IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revn. No. 118 of 1996
Date of Decision: November 28th , 2007

Randhir Singh

...Petitioner

Versus

State of Punjab

…Respondent

**CORAM: HON'BLE MR. JUSTICE HARBANS LAL**

Present: Mr.K.L.Chaudhri, Advocate
for the petitioner.

Mr.Antar Singh Brar, Deputy Advocate General, Punjab

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**Harbans Lal, J.**

This revision has been directed against the judgment/order dated 29th August, 1995 rendered by the Court of learned Sub Divisional Judicial Magistrate, Tarn Taran, whereby he convicted and sentenced the accused/ petitioner to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.1500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of six months under Section 304-A of the IPC and further sentenced him to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.500/- and in default of payment of fine to further undergo rigorous imprisonment for a period of two months under Section 427 of the IPC with a direction that both the sentences shall run concurrently as well as the judgment dated 15th February, 1996 rendered by the Court of learned Additional Sessions Judge,

Amritsar whereby he dismissed the appeal.

Shortly put, facts of the prosecution case are that on 3rd February, 1993 Sardul Singh and Kashmir Singh of village Naushehra Pannuan were returning to their village from Tarn Taran on a scooter whilst Harjinder Sigh son of Sardul Singh and Sarwan Sigh were also coming to their village on a Hero Honda Motorcycle bearing registration No.PB-06-9136, which was being driven by Sarwan Singh ahead of the complainant. At about 3.00 PM when they reached about 1 kilometer ahead of Rasulpur canal minor, meanwhile, a Mini bus bearing registration No.PB-02D-9592 driven by the accused rashly and negligently came from the opposite side and struck against the aforementioned motorcycle, as a result of its impact, they fell down and succumbed to the injuries at the spot. The accused after having stopped the bus took to their heels. SI Shamsher Singh conducted the inquest proceedings on the dead bodies of Sarwan Singh and Harjinder Singh and despatched the same to the hospital for their postmortem examination, prepared the rough site plan showing the place of accident, seized the bus and the motorcycle and put the accused under arrest. After completion of investigation, challan was presented in the Court of the Illaqa Magistrate. The accused was charged under Section 304-A and 427 IPC, to which he did not plead guilty and claimed trial.

In order to substantiate its allegations, the prosecution examined PW1 Dr. Karnail Kaur, PW2 Attar Singh, PW3 Manjit Singh, PW4 Mangal Singh, PW5 Sardul Singh complainant, PW6 Kashmir Singh, PW7 Surinder Singh Clerk DTO Office, Amritsar, PW8 Inspector Gian

Chand, PW9 HC Gurwinder Singh and PW10 Shamsher Singh Sub Inspector/ Investigating Officer. When examined under Section 313 Cr.P.C., the accused denied all the incriminating circumstances appearing in the prosecution evidence against him and pleaded innocence. He offered to produce defence evidence, but without leading any defence, he closed his defence.

After hearing the learned APP for the State as well as the learned defence counsel and examining the evidence on the record, the learned trial Court convicted and sentenced the accused/petitioner as noticed at the outset. Feeling aggrieved with the same, he carried an appeal, which was dismissed by the Court of learned Additional Sessions Judge, Amritsar.

Undaunted by the judgments recorded by the Courts below, the accused/petitioner has come up in revision in this Court.

I have heard the learned counsel for the parties and perused the record with due care and circumspection.

Mr. K.L.Chaudhri, Advocate representing the petitioner strenuously urged that as is borne out from the evidence of Sardul Singh PW5 as well as Kashmir Singh PW6, who claim to have witnessed the accident were not known to the accused/petitioner prior to the occurrence and to add further to it, no test identification parade of the accused/petitioner was got conducted by the prosecution and he was identified by the aforementioned witnesses only for the first time in the Court and thus, by no stretch of speculation, it can be said that the

accused/petitioner is the same person, who was driving the offending vehicle at the material time as identification of an accused in the Court is no identification in the eyes of law and on this sole score, this revision is liable to be accepted.

To tide over these submissions, Mr. Antar Singh Brar, Deputy Advocate General, Punjab maintained that there is ample evidence on the record to demonstrate that the accused/petitioner was identified at the spot and consequently, his test identification parade was not required.

I have given a deep and thoughtful consideration to the respective submissions. PW5 Sardul Singh and PW6 Kashmir Singh are in unison on the point that the accused present in the Court is the same person, who was driving the bus at the time of accident. Furthermore, it is in their evidence that the bus was stopped by the accused at the place of accident. So, they had the opportunity to see him. He ran away from the spot, on learning that the injured have expired. If the offending vehicle was not being driven by the accused/petitioner at the relevant time, he could have sought his test identification parade. When he was arrested, he had produced registration certificate of offending bus. As emanates from the evidence on record, he has not put forth any explanation as to under what circumstances this document came into his possession if he was not driving this vehicle when the accident took place. He has also not set up that this bus was being driven by some person other than him, when the accident took place. More to the point, statutorily speaking the offence under Section 304A IPC being bailable, the accused/petitioner could not be sent to jail for the purposes of

carrying out his test identification parade unless the same was claimed by him. In view of this ratiocination, this contention pales into insignificance and is thus rejected.

The next argument having been raised by Mr. Chaudhri is that a meticulous perusal of the evidence tendered by the witnesses referred to earlier would reveal that they have nowhere stated that the accused was driving the bus negligently. He further puts that the drivers of the buses on G.T. Road have the prerogative to move at a speed of 80 kilometers per hour, which can be hardly described to be rash. He further submitted that there being no evidence to the effect that the accused was driving the bus rashly and negligently, the learned courts below were not justified in recording the conviction as well as the sentence.

As against this, Mr. Brar pressed into service that the witnesses to the accident have stated in unequivocal terms that the bus in question was being driven by the accused/petitioner in a rash and negligent manner. I have well considered the rival contentions. A careful delving into the depositions of Sardul Singh as well as Kashmir Singh PWs would reveal that the accused/petitioner was driving the bus rashly. To be in fairness to Mr. Chaudhri, of course these witnesses are silent about the fact that the bus was being driven negligently. The prosecution is to establish either rashness or negligence in automobile accident cases for the reason that the legislature has employed the word “or” in between the words rash or negligent in the language of Section 304-A of IPC. This word is disjunctive in nature. In this view of the matter, my view also stands reinforced by

referring to the observations made in re: **S.N.Hussain vs. State of A.P.**, AIR 1972 Supreme Court 685 wherein it has been held that the offence under Section 304A IPC is committed either by doing a rash act or a negligent act. So, this contention too being bereft of any merit is turned down. Mr. Chaudhri further pressed into service that it is own case of the prosecution that the passengers were travelling in the bus and if it was so, the passengers should have been cited as a witnesses. He further argued that as regards Sardul Singh complainant, he is the father of the deceased Harjinder Singh and in so far as Kashmir Singh is concerned, he is also an interested witness and in these premises, it would be unsafe to rely upon their evidence.

On the other hand, Mr. Brar contended that the passengers could not be expected to wait till arrival of the police and as far as aforesaid witnesses are concerned, they are natural witnesses and that being so, their evidence cannot be discarded. This contention is digestible. The passengers by no stretch of imagination could be expected to wait for arrival of the police. Nowadays life is very hard and fast. On arrival of another bus, they might have boarded it to reach their destination in time and at the earliest possible. As is well settled, relationship is not a factor to affect the credibility of a witness. So, the statement of Sardul Singh cannot be brushed aside merely because of his being father of Harjinder Singh. The presence of Kashmir Singh PW being natural at the spot, his testimony can be relied upon without any demur. Consequently, the contentions raised by Mr. Chaudhri being devoid of any merit are overruled. No other material point

has been urged or agitated before me by Mr. Chaudhri. So, the conviction is maintained.

At this juncture, Mr.Chaudhri has submitted that the accused/petitioner is facing agony of trial since a pretty long time as this incidence is 14 years old, so, he may be released on probation. I have given a deep and thoughtful consideration to this submission. It is apt to be borne in mind that Sarwan Singh was aged about 21 years and Harjinder Singh was 19 years of age when they lost their lives in this accident because of rashness on the part of the accused/petitioner. The conscience of their kiths and kins will be shocked, and they will term the trial to be a mockery of justice, if the petitioner is released on probation. Survivors and family members are affected not only by an immediate death or disability, but also life time psychological and physical sufferings. So, this prayer is declined. Of course, having regard to the fact that the petitioner has been undergoing the ordeals of prosecution since 1993, the sentence inflicted under Section 304-A of IPC is reduced to one year while maintaining the fine imposed as well as its default clause under this Section. The substantive sentence as well as fine and its default clause imposed under Section 427 IPC is also maintained. The sentences shall run concurrently. Accordingly, this revision is disposed off.

November 28th , 2007 **(Harbans Lal)**
gsv **Judge**

Whether to be referred to the Reporter ? Yes/No